



Kumar Lama not facing re-trial for torture

Criminal proceedings against Colonel Kumar Lama of the Nepalese army were terminated today at the Central Criminal Court relating to charges of torturing Janak Raut in Nepal in 2005 after the Court accepted the Crown Prosecution Service decision not to proceed to a re-trial following a jury failing to reach a verdict in August 2016.

Janak Raut, one of the complainants, is a client of both Hickman & Rose and Advocacy Forum. He was subjected to repeated beatings and electric shocks in Nepal in 2005 during the Maoist insurgency. Colonel Lama was accused of directing the soldiers responsible for this treatment.

A jury was only able to convict Mr Lama of any offence if they were satisfied of his guilt beyond reasonable doubt. Evidently, the jury hearing the case earlier this year was unable to decide whether the evidence they heard met this threshold.

Our client is saddened to hear outcome today following the hung jury last month.

Mr Raut remains committed to the long-term work of ensuring accountability for the victims of alleged torture. He is grateful to the United Kingdom for its adherence to the international rule of law and its support for victims of torture in Nepal and other countries.

The struggle against impunity and government officials using torture will continue despite today's outcome. The fairness and generosity shown by a UK Court to Colonel Lama is in deep contrast with the conduct of those who have blocked access to justice for victims of alleged torture in Nepal.

Our client and his legal team hope that the prosecution in the UK of Mr Lama, and the fair trial process that has taken place, will encourage new demands for justice and accountability in Nepal.

This case has provided a powerful demonstration of the need for Nepal to criminalize torture and enforced disappearances and starting to conduct its own investigations and prosecutions. Otherwise, the only recourse for international victims of torture and other international crimes is to seek prosecutions in third party jurisdictions, which is unsatisfactory both for victims and defendants.

Janak Raut said

“I was forced to shout for help outside the country because I had no possibility to bring my alleged torturer to justice here in Nepal. I am disappointed with the decision not to re-prosecute Mr Lama. However, since he was arrested in the UK, the Government of Nepal has been advocating that Nepal will prosecute those involved in serious human rights violations in Nepal. I hope the Nepal Government will keep its promise of providing justice those who suffered during conflict.”

Hickman & Rose is expert in international criminal jurisdiction and has advised many victims of torture and war crimes in countries across the globe. Daniel Machover stated today:

“We have worked very hard on a number of these cases and it is a source of great satisfaction to know that the UK takes seriously its international obligation to investigate and where appropriate to prosecute alleged crimes of this nature.”

Mandira Sharma, founder of Advocacy Forum, said:

“The case of Colonel Lama is nothing but a direct consequence of the failure of the Nepali state to prosecute perpetrators of gross human rights violations during the conflict. We were forced to ask the UK prosecuting authorities to exercise universal jurisdiction as all our efforts to find justice in Nepal failed, with the Nepali government continuing to deny justice for the victims tolerating and promoting impunity for serious crimes including torture.”

“Although the proceedings against Mr. Lama have been brought to an end, the case has already established that the door of universal jurisdiction for the victims of torture and other serious violation is open in the UK and beyond. The experiences that we have gained will help to find justice in other similar cases and to continue our fight against impunity in Nepal”, she added.

“The government can see for itself that the cry for justice of its citizens has echoed across borders. The exercise of providing transitional justice is only going to be successful when the government is ready to face the truth. If the government does not take immediate measures to address past violations with laws and practice in line with international standards, many more colonels and leaders will have to face similar prosecutions in other countries, which is a matter of shame for all sovereign citizens of Nepal”, she also added.

Mr Raut and his legal team also pay tribute to all the witnesses who have doggedly continued to show their relentless commitment to this case. They have simply been amazing. We are concerned for their safety, and call upon UK and Nepali authorities to do everything possible to ensure they and Mr Raut are protected against any reprisals for their role in this case.

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NOTES TO EDITORS

1. The UK, like other states, is permitted, and, in some cases (e.g. war crimes [grave breaches of the Geneva Conventions] and torture), *required* to exercise criminal jurisdiction over any suspect, regardless of their nationality or location of the offence, who is found in its territory, unless it extradites the suspect or surrenders that person to an international criminal court. Universal jurisdiction is the term that describes this form of jurisdiction over the most heinous international crimes, such as war crimes, torture, crimes against humanity and genocide.

In the UK, Parliament has given the courts jurisdiction to prosecute *all* suspected war criminals and torturers, including where neither the victim nor the suspect has any connection with Britain. This complies with treaty obligations (i.e. in the four 1949 Geneva Conventions and Protocol I to those Conventions – which protect civilians and those outside combat; and the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - UNCAT), which effectively seek to ensure that there is no safe haven for those suspected of the most serious human rights abuses.

2. This is only the second torture case of its kind in the UK since the coming into force of section 134 of the Criminal Justice Act 1988 (on 29 September 1988). The first case resulted in a conviction in July 2005 of Farayadi Sawar Zardad for conspiracy to commit torture and take hostages in Afghanistan between 1991 and 1996 – see: http://www.cps.gov.uk/news/press_releases/135_05/
3. Mr Raut had the benefit of advice from a specialist 'universal jurisdiction' legal team in London, which was instrumental in drawing these issues to the attention of the authorities here. This team comprised experts from Hickman and Rose solicitors, [Daniel Machover](#) and [Kate Maynard](#), and

counsel [Patrick O'Connor Q.C.](#) of Doughty Street Chambers and [Paul Troop](#) of Garden Court Chambers.

4. Hickman and Rose is a niche firm specialising in criminal defence work and actions against the state. We are committed to justice and the rule of law. The civil team is renowned for its work in seeking public and private law remedies in the UK and other jurisdictions on behalf of victims of crime and other victims of the abuse of power by state agents within the criminal justice system. The combined resources and effective co-working of the civil and criminal defence teams position the firm uniquely to fight for justice on behalf of their clients in all arenas.
5. Advocacy Forum (AF) is a leading non-profit, non-governmental organization working to promote the rule of law and uphold international human rights standards in Nepal. Since its establishment in 2001, AF has been at the forefront of human rights advocacy and actively confronting the deeply entrenched culture of impunity in Nepal.

Despite the repeated threats and intimidation, AF has successfully brought a number of litigations before the UN Human Rights Committee and National Jurisdiction challenging impunity. AF's contribution to human rights advocacy in Nepal has been recognized by Human Rights Watch (HRW) in terms of "One of Asia's most respected and effective human Rights Organization". AF is a recipient of a number of awards including "Women In Leadership Award" (conferred by Swiss Agency for Development and Cooperation). <http://advocacyforum.org/>